

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
WASHINGTON, DC**

**AMERICAN RED CROSS-CAROLINAS
BLOOD SERVICES REGION
RESPONDENT
AND
TEAMSTERS LOCAL UNION #71
PETITIONER**

CASE 11-RC-6732

**BRIEF IN SUPPORT OF EXCEPTIONS OF RESPONDENT, AMERICAN
RED CROSS-CAROLINAS BLOOD SERVICES REGION, TO THE
DECISION OF ADMINISTRATIVE LAW JUDGE JOEL P. BIBLOWITZ**

Respectfully Submitted By:

John B. Langel
BALLARD SPAHR LLP
1735 Market Street
Philadelphia, PA 19103

Benjamin A. Johnson
ROBINSON, BRADSHAW & HINSON, P.A.
Post Office Drawer 12070
140 East Main Street, Suite 420
Rock Hill, SC 29731

Charles E. Johnson
ROBINSON, BRADSHAW & HINSON, P.A.
101 North Tryon Street, Suite 1900
Charlotte, NC 28246

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. STATEMENT OF FACTS	2
A. Procedural History	2
B. The Administrative Law Judge’s Decision.....	3
III. ARGUMENT	3
A. The ALJ Erred in Stating that the “Only Alleged Irregularity Was that the Challenged Ballots were Not Immediately Placed in the Ballot Box.” (Exception No. 1).....	3
B. The Evidence Establishes There was More Than a Simple Failure to Immediately Place the Two Challenged Ballots of Long and Baza in the Ballot Box. (Exception Nos. 2).....	6
C. The ALJ Erroneously Interpreted Section 11338.7 of the Board’s Representation Case Handling Manual. (Exception No. 3).....	8
D. The ALJ Erred in Failing to Consider the Cumulative Effect of Irregular Election Procedures on the Overall Fairness of the Election. (Exception No. 4).	9
IV. CONCLUSION.....	14

TABLE OF AUTHORITIES

NLRB CASES

<i>Laborers, Local 282</i> , 236 NLRB 621 (1978)	6
<i>Columbine Cable Company, Inc.</i> , 351 NLRB 1087 (2007).....	10, 12
<i>Daikichi Sushi</i> , 335 NLRB 622 (2001).....	7
<i>Fresenius USA Manufacturing, Inc.</i> , 352 NLRB 679 (2008).....	9
<i>Jakel, Inc.</i> , 293 NLRB 615 (1989).....	1, 9
<i>Paprikas Fono</i> , 273 NLRB 1326 (1984)	10, 13
<i>Polymers, Inc.</i> , 174 NLRB 282 (1969).....	9
<i>Queen of the Valley Hospital</i> , 316 N.L.R.B. 721 (1995).....	7
<i>Wild Oates Markets, Inc.</i> , 339 N.L.R.B. 81 (2003)	6

Other

<i>National Labor Relations Board's Representation Casehandling Manual</i>	1, 4, 5, 8, 9
--	---------------

I. INTRODUCTION

Secret ballot elections are a fundamental pillar in our country's labor relations policy. Indeed, the Board has often recognized that it will go to "great lengths to ensure that the manner in which an election was conducted **raises no reasonable doubt** as to the fairness and validity of the election." Jakel, Inc., 293 NLRB 615, 616 (1989) (emphasis added). Board law further establishes that a determination on whether a second election is warranted should not rise and fall on a party's ability to establish the proverbial "smoking gun," but rather when there is sufficient evidence to raise a reasonable doubt as to the fairness and validity of the election. To make that critical determination, the trier-of-fact should consider all evidence regarding the manner in which an election failed to comport with the Board's election procedures, and the cumulative effect of such failures.

As discussed in further detail below, the Respondent, American Red Cross-Carolinas Blood Services Region ("Red Cross"), excepts to Judge Biblowitz's finding that a second election was not warranted because the Judge incorrectly determined that the only irregularity in the election procedure was that challenged ballots were not immediately placed in the ballot box; incorrectly interpreted the requirements of challenge procedure as provided in the Board's Representation Casehandling Manual, Section 11338.7; and failed to apply controlling Board law in assessing the impact on the election as a result of the Board Agents' mishandling of ballots and mismanagement of the election.¹ Red Cross respectfully requests that the decision of Judge Biblowitz be reversed on this issue and a second election ordered. Alternatively, if a second election is not ordered, the Red Cross requests that the vote of its employee Brenda Faye

¹ References to the Decision of Administrative Law Judge Joel P. Biblowitz will be designated as follows: ALJD (followed by page : line numbers).

Long, one of the voters Red Cross contends was inappropriately challenged, be opened and counted along with the vote of Ms. Ruth Baza.

II. STATEMENT OF FACTS

A. Procedural History

The Board conducted an election on July 22, 2010 at the Red Cross. During the election, the Petitioner challenged the votes of two employees – Ruth Baza and Brenda Faye Long – claiming that both were Schedulers.² (ALJD 1-2:2.) After counting all other votes, the challenged votes were deemed sufficient to affect the results of the election. (ALJD 1.) On July 29, the Red Cross filed a timely objection alleging Petitioner should not have been allowed to challenge the ballots of Baza and Long without presenting evidence of changed circumstances. (ALJD 2:4-11.) In addition, one of the challenged voters (Long) submitted a letter alleging that the Board Agent mishandled her challenged ballot by leaving it on a table beside the Board Agent and failing to put the challenged ballot into the ballot box. (ALJD 2:11-20.)³

The National Labor Relations Board conducted a hearing on August 18, 2010 (the “Hearing”) to address two issues: (1) whether Long and Baza, who hold the positions of Collections Specialists I and II, share a community of interest with the proposed bargaining unit employees such that their votes should be counted; and (2) whether with respect to the

² The votes of approximately five other employees were also challenged because they did not vote at the location where they typically work. Prior to the vote count, and after confirming that none of these employees voted twice, the Petitioner and the Red Cross agreed that their votes would be counted. (Tr. 194-195.)

³ Petitioner argued at the hearing and in its post-hearing brief that the objection lodged by the challenged voter was untimely, not filed by a property party, and not properly served on the Petitioner, and thus, should have been dismissed. (Tr. 8-9, ALJD 6:14-15). The ALJ denied the Petitioner’s motion to dismiss the challenged voter’s objection, noting the regional office’s “wide discretion in expanding its investigation of the conduct of the election... .” (ALJD 6:19-39.)

challenged votes, the Board Agents followed required Board process designed to ensure the fairness and validity of the election. See Second Supplemental Decision on Challenged Ballots and Objection, Order Directing Hearing and Notice of Hearing (“Second Supp. Decision”).

B. The Administrative Law Judge’s Decision

The ALJ issued his decision on September 21, 2010. The ALJ sustained the Petitioner’s challenge as to Long and overruled the challenge as to Baza. (ALJD 8:38-39, 8:46-52.) As to the conduct of the election, the ALJ found that a second election was unwarranted, based in large part on his determination that the only defect in the conduct of the election was that the challenged ballots of Long and Baza were not “immediately” placed in the ballot box. (ALJD 10:24-31.)

III. ARGUMENT

A. The ALJ Erred in Stating that the “Only Alleged Irregularity Was that the Challenged Ballots were Not Immediately Placed in the Ballot Box.” (Exception No. 1).

As noted in the Red Cross’s post-hearing brief, Red Cross contends that the election was conducted improperly and that there is reasonable doubt as to the fairness and validity of the election for the following reasons:

1. The Board Agent failed to require the Petitioner to explain the changed circumstances that formed the basis for challenging the ballots of Long and Baza.
2. The Board Agent failed to ensure that at least two of the challenged ballots made it to the ballot box in a timely basis.
3. The Board Agent failed to keep all of the challenged ballots in a sealed ballot box until all parties were present for the counting.

(See Red Cross’s Post-Hearing Brief, pp. 2-3.)

Red Cross submits that the Board Agent's **first mistake** was her failure to comply with Section 11338.7 of the Board's Representation Casehandling Manual ("Casehandling Manual") which addresses when challenges should be allowed. It provides, in pertinent part:

Persons in job classifications specifically included by the Decision and Direction of Election should be given a ballot and permitted to vote without challenge based upon classification, unless there have been changed circumstances. Allegations of changed circumstances by the person seeking to challenge the employee should be reviewed by the Board Agent. Unless plausible reasons are given for the challenge, the person specifically included should be permitted to vote without casting a challenged ballot.

The Board Agents permitted the Petitioner to challenge the votes of Long and Baza even though both were included on the Excelsior list the Red Cross provided to the Board on July 2, 2010 (Joint Exh. 3), and even though the Petitioner petitioned for a unit that included their respective job classifications (Collection Specialist I and Collection Specialists II) – notably, the Petitioner petitioned for the unit after reviewing a list of employees that identified Long and Baza and their job classifications. (Pre-Election Emp. Exhibit 11, attached to Red Cross's Post-Hearing Brief, as Exhibit A). The Board Agent never asked the Petitioner about any changed circumstances when the Petitioner called into question the eligibility of Long and Baza to vote. (Tr. 216, 218-219). And the Petitioner presented no evidence, let alone plausible reasons, of changed circumstances since the time of the hearing or the time it received the Excelsior list. (Id.) Accordingly, Long and Baza should have been permitted to vote without challenge.

The Board Agent's **second mistake** was her failure to comply with Section 11338.3 of the Casehandling Manual which is designed to ensure that challenges are appropriately monitored. It provides, in pertinent part that:

[The] voter places the marked ballot in the challenge ballot envelope, seals the envelope and drops the envelope in the box.

Both the Petitioner's observer, Charles M. Current, and Red Cross's observer, Sandy Stroup, testified that the Board Agent conducted the election in such a manner that Long's ballot was not placed in the ballot box but rather was placed on a table alongside the ballot box. (Tr. 217-218, 222-223, 235-237). Even the Petitioner's observer, Current, admitted that Long's ballot was not in the custody of the Board Agent but rather was on the table for an undetermined amount of time. (Tr. 237). Stroup testified unequivocally that Baza's ballot was placed on top of Long's ballot which had remained on the table for her entire two hours as an observer. (Tr. 222-223). Neither Current nor Stroup ever saw what happened with regard to the challenged ballot envelope. (Tr. 222-223, 237). Finally, Current testified that he never saw Baza put her ballot in the ballot box. (Tr. 233).

The Board Agent's **third mistake** was her failure to comply with Section 11324 of the Casehandling Manual when she closed the polls. It provides, in pertinent part:

The slot in the ballot box should be sealed with tape at the close of the polls. The Board Agent should thereafter, until the count, maintain personal custody of the ballot box unless, by unanimous agreement, other arrangements are made.

On this issue, Red Cross's witnesses, Delores Smalls and Wendy Barnes,⁴ credibly testified that when the ballot count started the challenged ballots were not in the sealed ballot box, but rather were in and were removed from a brown envelope alongside the sealed ballot box. (Tr. 194, 207-208, 225). Stated another way, the challenged ballots were not in the sealed ballot boxes at the time the sealed ballot boxes were placed on the table so the ballots could be

⁴ Smalls has been employed with the Red Cross for 37 years and is the current Director of Human Resources. (Tr. 187). Barnes is the Interim Collections Operations Supervisor. (Tr. 225).

counted. Either the challenged ballots never made their way to the ballot box, or they were removed before the ballot box was sealed.

B. The Evidence Establishes There was More Than a Simple Failure to Immediately Place the Two Challenged Ballots of Long and Baza in the Ballot Box. (Exception Nos. 2).

The ALJ's decision that the election was fair and valid turned on his determination that the challenged ballots of Long and Baza somehow made it into the ballot box before the polls closed and the ballot box sealed. But the only shred of evidence that supports the ALJ's determination on this critical issue is the testimony of union witness Amy Lee, a "relief observer," who testified she saw Baza place her challenged ballot in the ballot box. (Tr. 238-239; see also, ALJD 9:38-39). Notably, the ALJ did not credit Lee's testimony; her testimony stands alone and is contradicted by the testimony of every other witness .

Even Current, the union witness who the judge deemed "the most credible witness," testified that he did not see Baza place her ballot in the ballot box. (Tr. 233).⁵ Moreover, the ALJ necessarily ignored testimony of employer witnesses he conceded were also credible. For example, Stroup, who was present alongside Current during the election, testified unequivocally that Baza's ballot was placed on the table on top of Long's ballot, where it remained for her entire two hours as an observer. (Tr. 222-223). Barnes and Smalls unequivocally testified that at the ballot count – held in a room separate from the polling area and after the evening voting session – the Board Agents were carrying a larger brown/manilla envelope with the challenged

⁵ Current's testimony undermines Amy Lee's testimony that she saw Baza place her vote in the ballot box. Cf. Laborers, Local 282, 236 NLRB 621, 624 (1978) (union witnesses lacked credibility based in part on their contradictory testimony); see also Wild Oates Markets, Inc., 339 NLRB 81, 84-85 (2003) (inconsistent testimony of General Counsel's employee witnesses lacked sufficient reliability to support preponderance of the evidence that unfair labor practice occurred).

ballots including the challenged ballots of Long and Baza, which further demonstrates that the challenged ballots never made it into the ballot box before it was sealed. (Tr. 194, 206-208, 225).

Indeed, the evidence establishes that the challenged ballots were placed in a brown/manilla envelope at some point before the ballot count. Though Current testified that he “did not see” the manilla/brown envelope (Tr. 241-242), what Current did not say is just as important. Current did not say, for example, that he definitively knew whether or not the Board Agents had a brown/manilla envelope. In fact, unlike Barnes and Smalls who were at the ballot count and saw the brown/manilla envelope, there is no testimony or evidence that Current was even present at the ballot count;⁶ thus, the Petitioner failed to provide any testimony to contradict the employer’s witnesses regarding what transpired at the ballot count.⁷ Yet, the ALJ apparently credits Current’s testimony regarding the non-existence of a brown/manilla envelope, which was pivotal in his determination that the challenged ballots were not mishandled. This misunderstanding of Current’s testimony is a fatal flaw in the ALJ’s decision since the record clearly establishes Current testified as to what he saw (and did not see) at the close of the first voting session at the Clanton Road Facility on the morning of July 22, whereas Barnes and Smalls testified about what they saw later that evening when the ballots were counted.

⁶ Current was at the first voting session at the Clanton Road Facility, from 4:30 a.m. to 12:30 p.m. (Tr. 229). Barnes and Smalls attended the ballot count held in a room separate from the polling area and after the evening voting session. (Tr. 206-208, 225)

⁷ Cf. Queen of the Valley Hospital, 316 NLRB 721, 721 fn. 1 (1995) (even where adverse inference could not be drawn against the General Counsel, ALJ should be allowed to weigh the failure to call a witness in making credibility determinations); Daikichi Sushi, 335 NLRB 622, 622, fn. 4 (2001) (it is well settled that failure of a party to call a witness “who may reasonably be assumed to be favorably disposed to the party,” allows for an adverse inference to be drawn “regarding any factual question on which the witness is likely to have knowledge.”) (citation omitted).

The weight of the evidence establishes that the challenged ballots of Long and Baza never made it into the ballot box before the election closed and the ballot box was sealed. In the alternative, if the challenged ballots were at some point placed in the box before the polls closed, the evidence strongly suggests that the challenged ballots were subsequently fished out and placed in the brown/manilla envelope, along with other challenged ballots before the ballot count.⁸ Either scenario represents an egregious mishandling of challenged ballots sufficient to warrant a new election.

C. The ALJ Erroneously Interpreted Section 11338.7 of the Board's Representation Case Handling Manual. (Exception No. 3).

The ALJ determined that there was no violation of Section 11338.7 because the challenged voters were not specifically identified as Collection Specialists in the Decision and Direction of Election (“DD&E”) authored by the Regional Director.

[Section 11338.7] refers to “Persons in job classifications *specifically included* by the Decision and Direction of Election [emphasis added].” However while the collection specialist job classifications were specifically included in the DD&E, nowhere was Long specifically included in the unit.

ALJD 9:19-22. In other words, according to the ALJ’s interpretation of Section 11338.7, a union or employer could challenge – without being required to provide an explanation of changed circumstances – every single voter not specifically identified in the DD&E as belonging to an approved job classification. This interpretation essentially negates the purpose of having a representation hearing to determine the appropriate bargaining unit in the first instance, and if

⁸ The ALJ asserted that even if the challenged ballots of Long and Baza were placed in a brown/manilla envelope, there would be no basis to sustain the Red Cross’s objection since the two challenged ballots were kept separate and apart from the other ballots. ALJD 10:28-29. In so doing, the ALJ failed to account for the other challenged ballots, numbering at least four or five, that were also kept in the brown/manilla envelope and excluded from the sealed ballot boxes prior to the election count. (See Tr. 194, 208.)

applied on mass scale such an interpretation would result in incredibly inefficient elections and practically unenforceable election results.

Contrary to the ALJ's decision, the proper interpretation of Section 11338.7 requires that a Board Agent solicit an explanation for the alleged changed circumstances where the challenged voter is in a job classification that has been specifically included in the bargaining unit as defined in the DD&E. Red Cross's interpretation is consistent with the last paragraph in Section 11338.7, which provides that the challenged ballot procedure should be used whenever there is reasonable doubt that changed circumstances have altered a voter's eligibility. However, where a voter's job classification has already been specifically included in the DD&E, Section 11338.7 requires that the Board Agent allow the challenged voter to cast his/her ballot unless the Board Agent is provided a plausible explanation regarding the alleged changed circumstances.

The fact that the Board Agent did not receive or solicit an explanation of changed circumstances regarding Long and Baza is undisputed. Thus, the Board Agent's failure in this regard constitutes another "irregularity" in election procedure that the ALJ should have considered in determining whether there was a reasonable doubt that a fair and valid election was conducted.

D. The ALJ Erred in Failing to Consider the Cumulative Effect of Irregular Election Procedures on the Overall Fairness of the Election. (Exception No. 4).

Recently, in Fresenius USA Manufacturing, Inc., 352 NLRB 679, 680 (2008), the National Labor Relations Board Chairman Schaumber, joined by Member Liebman, recognized that:

When determining whether to set aside an election on the basis of Board Agent conduct, "the Board goes to great lengths to ensure that the manner in which an election was conducted raises no reasonable doubt as to the fairness and validity of the election." Jakel, Inc., 293 NLRB 615, 616 (1989) (citing Polymers, Inc., 174

NLRB 282 (1969), enfd., 414 F.2d 999 (2d Cir. 1969), cert. denied, 396 U.S. 1010 (1970)).

* * *

The Board will set aside an election...if the irregularity is sufficient to raise “a reasonable doubt as to the fairness and validity of the election.” Polymers, 174 NLRB at 282.

Continuing, the Board in Fresenius confirmed a fundamental purpose of the Board’s election procedures when it wrote:

The Board’s election procedures are designed to ensure both parties an opportunity to monitor the conduct of the election, ballot count, and determinative challenge procedure.” Paprikas Fono, 273 NLRB 1326, 1328 (1984). See also Madera Enterprises, 309 NLRB 774 (1992) (same).

Here, the cumulative effect of the irregularities during the casting of the ballots followed by the Board Agent’s failure to secure the challenges with the ballot box raises a reasonable doubt as to the fairness and validity of the election. Notably, the Board Agent (i) did not require the Petitioner to explain the changed circumstances that formed the basis for the challenge; (ii) did not insure that at least two of the challenged ballots made it to the ballot box in a timely basis; and (iii) did not keep the challenged ballots in a sealed ballot box until all parties were present for the counting. In so doing, the Board Agent failed to comply with required election procedures, which both casts a reasonable doubt as to the fairness and validity of the election and prevented the ability to monitor the conduct of the election from start to finish.

In elections in which similar conduct and similar violations have occurred, the Board has not hesitated to void the election despite there being no evidence that a ballot was tampered with. See, Fresenius; Columbine Cable Company, Inc., 351 NLRB 1087 (2007); and Paprikas Fono. Notably, the ALJ failed to address Columbine Cable or Paprikas Fono, two significant cases Red

Cross relied upon in support of its objections and which require that the election be invalidated. The failure to address Columbine Cable or Paprikas Fono is fatal to the ALJ's decision.

The facts in Fresenius were as follows. There were two units of employees – drivers and warehouse employees—who voted using two different color ballots – yellow and green. Ballots were marked “UNIT A – GREEN” or “UNIT B – YELLOW.” Because he was color-blind, the Board Agent would ask “yellow or green?” to determine the ballot a voter should receive. On one occasion, there was confusion as to the color an employee was to receive. The confusion was corrected. During the counting of the ballots, the employer's representatives were required to back away from the counting table.

The Administrative Law Judge in Fresenius acknowledged that the Board Agent's handling of the ballot did not comport with Board guidelines but determined that “these irregularities were not objectionable absent evidence that they actually affected the election results. Fresenius at 680. He even reviewed and counted the ballots to confirm that there were no questionable markings on the ballots and that the number of ballots cast for each unit matched the number of eligible voters in each unit. Further, he dismissed the possibility that employees may have voted with incorrect ballots. Accordingly, he determined that the Board Agent's conduct did not warrant setting aside the election.

The Board reversed stating:

We find it unnecessary to pass on whether the irregularities in this election, considered separately or in various combinations, would warrant setting aside the election. Rather, reviewing all the facts in this case, we find that the cumulative effect if these irregularities, particularly those during the ballot count, raises a reasonable doubt as to the fairness and validity of the election. This is especially so considering the closeness of the election, where even one mistake in the distribution or counting of the ballots could have altered the election outcome. Accordingly, we sustain the Employer's

Objections 1, 3, 4, and 5, set aside the election, and direct a second election.

Id.

Here, the Board Agents' handling of the ballots clearly did not comport with Board guidelines and, far worse than requiring the observers to back away from the counting table, the Board Agents failed to secure all of the challenged ballots in the ballot box when, out of eyesight of the observers, they placed all or some of the challenged ballots in the larger brown envelope while the ballot box was still sealed. As in Fresenius, the objection does not rise and fall on the ability to establish the proverbial "smoking gun" that the ballot was tampered with but rather raised a reasonable doubt as to the fairness and validity of the election, a determination that the ALJ failed to address. Accordingly, the Red Cross's objection should be sustained and the election set aside.

In Columbine Cable, by agreement of the parties, two late arriving employees were permitted to vote.⁹ Because the voting booth had been disassembled, both voters separately entered the voting room and voted, standing 15 feet away from the observers. While voting, portions of their ballots could be seen by the observers although there was no evidence that anyone saw or alleged to have seen how the two voted. Even absent any evidence that the votes were exposed, the Board invalidated the election because the regularity of the election was not above reproach. See Columbine Cable at 1087. In Columbine Cable, the election was not invalidated due to the lack of integrity of the ballots; there, the election was invalidated because the process was not above reproach. Here too, as a result of the failure to track the ballots of Long and Baza from their hands to the ballot box, and the failure to account for all the

⁹ Section 11324.1 of the Casehandling Manual allows for an agreement.

challenged ballots being placed in a separate brown envelope at a time when the ballot box was sealed, the election was not above reproach.

Paprikas Fono is similarly instructive. There the employer alleged that the Board Agent failed to ensure that the challenged ballot envelopes were properly sealed before he put them in the ballot box, a fact never established. The evidence at the hearing on the objections revealed the following: (i) after the 21 challenged ballots proved determinative, the Board Agent placed the challenged ballot envelopes in the case file which he took to the Regional Office; (ii) the Board Agent left the case file in his locked office; (iii) the next day, the Board Agent put the challenged ballots in a large manila envelope which he sealed and placed in the Regional Office's election safe; (iv) five days before the hearing on the objections, the Regional Attorney and counsel for the Region, with the permission of the Assistant Regional Director, had the Board Agent remove the envelope from the safe which the Regional Counsel opened; (v) after inspecting, but not opening, the challenged ballots envelope to see if they were sealed, the Regional Counsel returned them to the Board Agent; and (vi) the Board Agent placed the challenged ballots in another large envelope which he sealed and returned to the election safe.

The hearing officer concluded that the employer had not demonstrated a reasonable possibility of irregularity because of "the lack of evidence in this case that the Region tampered with any of the challenged ballot envelopes." Paprikas Fono at 1326-1327. The Board disagreed and ordered a new election even in the absence of evidence that the challenged ballots were tampered with. Id. at 1328.

As here, the Employer's opportunity to monitor was denied. In Paprikas Fono, the larger envelope did not make it to the safe immediately. Here, the challenged ballots did not make it to the ballot box in a timely manner, if at all. In Paprikas Fono, the larger envelope was opened in

the Region's offices when the observers were not present. Here, the challenged ballots were placed in the larger envelope when the observers were not present. As in Paprikas Fono, the election should be set aside.


Most simply stated, the failure to ensure the challenged ballots entered the ballot box in a timely manner and their subsequent removal and placement in the larger envelope outside the presence of observers are the types of egregious irregularities that, by themselves, require the election to be set aside. Compounded with the undisputed fact that the Board Agent failed to comply with yet another procedural requirement by not soliciting an explanation of changed circumstances, there is more than a sufficient basis to reasonably doubt the election was conducted in a fair and valid manner.

IV. CONCLUSION

For all the foregoing reasons, the Decision of Judge Biblowitz should be reversed and a second election ordered. Alternatively, if a second election is not ordered, the Red Cross requests that the vote of its employee Brenda Faye Long be opened and counted along with the vote of Ruth Baza.

Respectfully submitted this 5th day of October, 2010:

By Attorneys for American Red Cross-Carolinas
Blood Services Region:



John B. Langel
BALLARD SPAHR LLP
1735 Market Street
Philadelphia, PA 19103

Benjamin A. Johnson
ROBINSON, BRADSHAW & HINSON, P.A.
Post Office Drawer 12070
140 East Main Street, Suite 420
Rock Hill, SC 29731

Charles E. Johnson
ROBINSON, BRADSHAW & HINSON, P.A.
101 North Tryon Street, Suite 1900
Charlotte, NC 28246

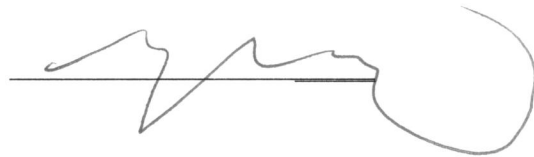
CERTIFICATE OF SERVICE

This is to certify that I have served a true and correct copy of the **EXCEPTIONS OF RESPONDENT, AMERICAN RED CROSS-CAROLINAS BLOOD SERVICES REGION, TO THE DECISION OF ADMINISTRATIVE LAW JUDGE JOEL P. BIBLOWITZ** and the **BRIEF IN SUPPORT OF EXCEPTIONS OF RESPONDENT, AMERICAN RED CROSS-CAROLINAS BLOOD SERVICES REGION, TO THE DECISION OF ADMINISTRATIVE LAW JUDGE JOEL P. BIBLOWITZ**, upon the National Labor Relations Board and National Labor Relations Board, Region 11, by E-filing and upon the following by electronic mail and regular U.S. Mail:

James F. Wallington
Baptiste & Wilder, P.C.
1150 Connecticut Avenue, NW, Suite 500
Washington, DC 20036
Email: jwallington@bapwild.com

Ronald Morgan
National Labor Relations Board, Region 11
Post Office Box 11467
Winston-Salem, North Carolina 27116-1467
Email: ronald.morgan@nrlrb.gov

This 5th day of October, 2010.

A handwritten signature in black ink, appearing to be "Ronald Morgan", written over a horizontal line.